

Significant Legislative Rule Analysis (SA)

WAC 246-980-010 Definitions

WAC 246-980-020 Who must be certified as a home care aide?

WAC 246-980-030 Can a non-exempt long-term care worker begin working before obtaining certification as a home care aide?

WAC 246-980-040 What must a long-term care worker do to be eligible for a home care aide certification and what documentation is required?

WAC 246-980-050 How long does a long-term care worker have to complete home care aide training and certification requirements?

WAC 246-980-060 How does a home care aide renew a certification or reinstate an expired certification?

WAC 246-980-070 Who is exempt from obtaining a home care aide certification?

WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?

WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?

WAC 246-980-100 Examination and reexamination for home care aide certification.

WAC 246-980-110 Continuing education.

WAC 246-980-120 Home care aide – application – conviction data – criteria for denial or conditional licensed

Rules Concerning Home Care Aide Certification

Section 1. What is the scope of the rule?

The proposed rules establish a new requirement for home care aide certification. They require certain long-term care workers to become certified, which entails passing a background check, completing training, passing a certification examination, and completing ongoing continuing education. The proposed rules also identify the criteria to renew and reinstate certification and identify applicable fees. Lastly, the rules identify certain long-term care workers who are exempt from the home care aide certification requirement.

Long-term care workers include direct care employees of home care agencies, state licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, and community residential service providers. They also include persons providing long-term care services to persons with developmental disabilities. This rule does not apply to persons employed by nursing homes, hospitals or other acute settings, residential habilitation centers, hospice agencies, adult day care centers or persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services. The Office of Financial Management has estimated there will be 8,500 applicants for home care aide certification in fiscal year 2011 and an additional 17,500 applicants in fiscal year 2012.

The Department of Health (department) is proposing this rule because Initiative Measure No. 1029, as amended by ESSB 6180, creates certification for home care aides. Specifically, the

initiative establishes chapter 18.88B RCW, which provides for the certification of home care aides. Chapter 74.39A RCW also contains some of the certification requirements.

Section 2. What are the general goals and specific objectives of the proposed rule’s authorizing statute?

Initiative Measure No. 1029, as amended by ESSB 6180, creates certification for home care aides. The initiative establishes certification of home care aides.

The general goal of the new statutes is to assure and enhance the quality and competency of long-term care services provided to the elderly and persons with disabilities.

The statute’s objectives implemented by the rule are to assure that long-term care workers for the elderly or persons with disabilities have the education, experience, skills and knowledge necessary to practice competently.

Section 3. What is the justification for the proposed rule package?

The proposed rules require certain long-term care workers to be certified. Certifying these workers as home care aides will help ensure quality of care for the elderly and persons with disabilities. The certification requires that applicants obtain specific training and pass an examination before they can obtain their certification. The rules also explain the criteria used by the department for reviewing the federal and state background check and determining whether the applicant is eligible to be certified.

The department has assessed and determined that there are no feasible alternatives to rulemaking because the statute requires rules to implement the laws. In addition, standards for licensure can only be enforced when they are set in rule.

Section 4. What are the costs and benefits of each rule included in the rules package? What is the total probable cost and total probable benefit of the rule package?

Identification of total number of rules in package. 13

Non-Significant Rule Identification Table

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Section Subject	Reason
1	WAC 246-980-010	Definitions	Clarifies terms used in statutes and rule.	Definitions provide clarification needed for these rules. They do not set standards.
2	WAC 246-980-020	Home Care	Who must	The rule identifies who must

		Aide Certification	be certified	be certified. This information is taken from chapter 74.39A RCW and chapter 18.88B RCW.
3	WAC 246-980-110	Continuing Education	Identifies requirement	Continuing education requirements exist in RCW 74.39A.340. The proposed rule provides for the process for licensure, which does not require a cost benefit analysis.
4	WAC-246-980-990	Fees	Fees	Under RCW 34.05.310, the department is not required to conduct a cost benefit analysis on fees. The department did prepare a separate fee study.

Significant Rule Analysis

A. WAC 246-980-030 Can a non-exempt long-term care worker begin working before obtaining certification as a home care aide? And WAC 246-980-050 How long does a long-term care worker have to complete the home care aide training and certification requirements?

Rules Overview: RCW 74.39A.073 allows long-term care workers to work for 120 days while training. RCW 18.88B.020 allows a long-term care worker to work up to 150 days before becoming certified. They must then have their certification at the end of that time or stop working. The rules clarify these laws. The rules also add a requirement for the long-term care worker to submit their application for certification as a home care aide within three days of hire.

This rule also states that if a long-term care worker who has not completed training has their employment terminated before reaching the 120 day deadline and is rehired within twelve months of the date of termination, they may receive credit for the training already required.

Rules Cost Benefit Analysis: The proposed rule allows workers to continue working when their application is being reviewed by the department. If the department does not issue the certification within 150 days, the home care aide must stop working. The rule also recognizes and grants credit for training already acquired if an applicant is terminated and rehired within twelve months.

The proposed rule requires the application to be submitted within three days of hire. Once an application has been submitted to the department, the long-term care worker comes under the Uniform Disciplinary Act. If the department finds that the applicant is not able to practice with reasonable skill and safety, the department can take steps to deny the application. This helps to assure protection for the vulnerable elderly and persons with disabilities.

The rule does not create an additional cost the home care aide. Therefore, the benefits to both the applicant and the people who receive their care outweigh the cost.

B. WAC 246-980-040 What must a long-term care worker do to be eligible for a home care aide certification and what documentation is required and WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?

Rules Overview: RCW 18.88B.020 requires an applicant for the home care aide certification to obtain the training required by RCW 74.39A.073 and successfully complete the certification examination. The proposed rules also require four hours of AIDS education as required by RCW 70.24.270 and WAC 246-12-260. AIDS education applies to all health care professions credentialed by the department. The applicant is required to submit an application provided by the department, verification of their training and the required fees. In addition, the applicant is required to apply and submit payment for examination directly to the examination contractor.

Depending on licenses and experience of long-term care workers, some individuals may be exempt from required training, but will have to take the examination to become certified.

Rules Cost Benefit Analysis: The fees for training and examination have not yet been established because the Department of Social and Health Services has not yet approved curriculum or programs to provide the training. The Department of Health is still working on retaining a contractor to create and administer the examinations. The department's assumption is the costs of the training and examination will be in the same range as the costs for the similar programs listed below.

- The Fundamentals of Caregiving course (currently required of long-term care workers in boarding homes, adult family homes and those reimbursed by the state) range from \$121 to \$211 per person.
- The nursing assistant examination is \$107 per person for both the written and skills evaluation. If an applicant is required to re-test. The cost is \$36 for the written test and \$71 for the skills evaluation.

The benefit of assuring home care aides have the education, experience, skills and knowledge necessary to practice competently, as evidenced by completing the required training and taking the required examination, outweigh the cost.

C. WAC 246-980-060 How does a home care aide renew a certification or reinstate an expired certification? And WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?

Rules Overview: The rules require all home care aides to renew their certification every year as described in chapter 246-12 WAC. They must submit verification of completion of the twelve hours of continuing education required by RCW 74.39A.073. If the certification is expired for less than three years, the rules allow reactivation by complying with chapter 246-12 WAC and

submitting verification of completion of the twelve hours continuing education for each year the license was expired.

If the certification is expired for more than three years, home care aides must successfully repeat training, take the examination and comply with chapter 246-12 WAC. For exempt long-term care workers, the rules allow reactivation by proof of employment as a long-term care worker or by meeting the original training and examination requirements. Workers originally exempt from training requirements may continue to be exempt from training requirements.

Rule Cost/Benefit Analysis: These rules comply with the requirements of the initiative as well as the requirements of the existing chapter 246-12 WAC. They establish the requirement to protect the vulnerable elderly and persons with disabilities by requiring the long-term care worker prove ongoing competency. Costs related to this are the same as they are for other workers required to obtain certification.

The benefit of protecting the elderly and persons with disabilities outweighs the cost of training, examination and certification of the long-term care worker.

D. WAC 246-980-070 Who is exempt from obtaining certification?

Rules Overview: These rules describe and clarify which long-term care workers are not required to obtain a home care aide certification RCW 74.39A.009 (16) and RCW 18.88B.040 specifically identifies who these workers are. However, the department clarified the following:

- RCW 18.88B.040 exempts registered nurses, licensed practical nurses, certified nursing assistants, or other persons who hold a similar credential as determined by the secretary of health. The proposed rule identifies certified counselors, speech language pathologists and audiologists, occupational therapists and physical therapists as holding a similar credential because they provide care under their individual licensures within the home and community-based settings.
- RCW 18.88B.040 exempts Medicare-certified home health aides. Because this designation does not exist, the rule clarifies that a home health aide employed by a Medicare Certified Home Health Agency meets the requirements of 42 CFR, Part 483.36 is exempt.
- RCW 18.88B.040 exempts long-term care workers who are already employed as a long-term care worker on January 1, 2011. The proposed rule, however, does not allow long-term care worker who have not provided care for over three years to be exempt.

Rules Cost/Benefit Analysis: The benefit of the proposed rule is that it recognizes certain long-term care workers who already possess the skills to provide care under various licenses or experience. The proposed rule also benefits the elderly and people with disabilities by requiring long-term care workers who have not provided care for over three years to re-train and take the examination.

E. WAC 246-980-100 Examination and reexamination for home care aide certification.

Rules Overview: RCW 18.88B.030 requires an examination which includes both a written or oral examination and a skills demonstration. This law also requires the department to define how many times the applicant can take the examination and whether intermediate remedial steps should be required. The proposed rule allows an individual who fails a portion of the examination (either written or skills or both) to retake the examination twice. An individual who fails the examination three times must retrain before again attempting the examination. An individual who has not successfully completed the examination within two years or who does not successfully complete the examination within three tries cannot provide care until the certification has been issued. These requirements are similar to what is currently done with the nursing assistant examination.

Rule Cost/Benefit Analysis: The applicant who does not successfully complete one or more portions of the examination will be required to pay another fee to re-take the examination. The applicant who fails the examination three times will also be required to pay for training if they want to continue to pursue a credential. The proposed rule protects the vulnerable elderly and persons with disabilities by requiring the long-term care worker prove competency. These benefits outweigh the cost of training, examination and certification of the long-term care worker.

F. WAC 246-980-120 Home care aide – application – conviction data – criteria for denial or conditional license.

Rules overview: RCW 18.88B.030 requires the department to adopt rules that establish criteria for reviewing an applicant's state and federal background checks. This rule describes the factors that will be considered when determining whether to deny or grant certification with conditions due to the applicant's criminal history. It does not list specific crimes that will automatically disqualify an applicant from licensure.

Cost/Benefit Analysis: There is no cost to the applicant. The benefit is that although an applicant may have a criminal history, the proposed rule may allow the applicant to become a home care aide if the department determines they can provide the services with reasonable skills and safety.

Rule Package Cost-Benefit Conclusion

Cost/Benefit summary

Initiative Measure No. 1029 imposes the costs of training, examination and certification on those required by the initiative to hold this certification. Many of the requirements imposed by the department do not have an additional cost to the applicant or credential holder. These requirements include submitting the application within three days of hire, paying the examination contractor directly, submitting verification of continuing education with their renewal, and criteria for reviewing the applicant's conviction data.

Costs are imposed for the following requirements:

- An exempt long-term care worker must apply for certification if they have not worked for a period of three years or more.
- A worker whose certification has expired for more than three years must re-train and retest to reinstate their certification.
- Persons who do not pass the examination within three attempts or within two years must retrain before retaking the certification examination again.

Although there may be costs imposed, as described above, for certain long-term care workers to take the required training, take an examination and become certified, the overall benefit of assuring they have the ability to perform competently as a long-term care worker outweighs the costs of training, examination and certification .

Section 5. What alternative versions of the rule did we consider? Is the proposed rule the least burdensome approach?

Descriptions of alternatives considered

Alternative version #1:

The first version of the rules had no definitions included. It did not split the requirements into two different places for the long-term care workers required to obtain certification and those exempt. It contained the details of the training while the current version references the appropriate law. It indicated that persons convicted of crimes listed in RCW 43.43.830(5) could not work until certification was granted. It also did not allow someone to work during the time he or she was training for “reactivation” of a credential. In addition, it did not contain criteria for the background check.

Alternative version #2:

This version added some definitions but not as many as the final version contains. Like the first version, it contained details of the training instead of simply referring to the appropriate law. It included provisions for “starting and stopping” the one hundred fifty days required to obtain licensing. The new version allows the clock to start over if the employer changes while allowing the applicant to keep training already obtained while with the first employer. Like the first version, this version did not allow the applicant for reinstatement to work during training. In addition, it described continuing education requirements instead of referring to the appropriate law.

Compared to the alternative versions, the proposed rule is less burdensome for those required to comply with it because it allows the applicant to work while training for “reactivation”. The department revised the language so that the reader can better understand the conditions.

The alternate versions did not have the requirements for background review. That is required by law. In addition, this background review, along with the removal of the “requirement that a

person can not work if convicted of certain crimes” puts the burden for criminal review fully on the department instead of the applicant.

Alternative version #3

This version considered Home Care Aide and Nursing Assistant Reciprocity.

Overview: Initiative Measure No. 1029 created RCW 18.88A.115 which requires the department, with consultation from the Nursing Care Quality Assurance Commission (Commission), to develop rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

The Commission, over the past few years, has reviewed this issue extensively. Members of the Commission have reviewed the laws and have met with the Department of Social and Health Services in an attempt to find reciprocity between the current Fundamental of Caregiving and the federal regulations for nursing assistants. While the curriculum was similar, the federal law requires the nursing assistant training program to be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services. In addition, there must be at least sixteen hours of supervised practical training under the direct supervision of a registered nurse or a licensed practical nurse.

The Fundamentals of Caregiving program did not meet these requirements. It was noted that requiring this training be performed by or under the general supervision of a nurse would limit where the student could obtain the course. They would not be able to travel far enough to get the training and/or there would not be enough training programs to meet the need.

Analysis: The federal rules for nursing assistant training programs have not changed since approximately 1989. The department understands that the Department of Social and Health Services will not require this new training be performed by or under the general supervision of a registered nurse. Until this happens, the department finds that federal law does not allow reciprocity between home care aides and certified nursing assistants.

Section 6. Did you determine that the rule does not require anyone to take an action that violates another federal or state law?

The rule does not require those to whom it applies to take an action that violates requirements of federal or state law.

Section 7. Did we determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless the difference is required in federal or state law?

The Department of Health determined that the rule does not impose more stringent performance requirements on private entities than on public entities. All costs are borne by the applicant for a home care aide.

Section 8. Did you determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, did we determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary?

The rule does not differ from any applicable federal regulation or statute.

Section 9. Did we demonstrate that the rule has been coordinated, to the maximum extent possible, with other federal, state, and local laws applicable to the same activity or subject matter?

Yes, the rule is coordinated to the maximum extent practicable with other applicable laws, including background checks and training requirements being established by the Department of Social and Health Services. Initiative Measure No. 1029 requires the Department of Social and Health Services to perform background checks on all long-term care workers and to establish criteria for the required training.

The Department of Health has worked closely with the Department of Social and Health Services to assure that the draft rules will correlate with the procedures and rules being worked on by the Department of Social and Health Services.